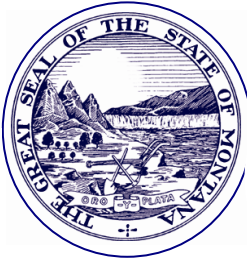


OFFICE OF THE STATE PUBLIC DEFENDER



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April 4, 2012

TO: Montana Public Defender Commission

FROM: Larry Murphy, Contract Manager

RE: Report to Commission

1. New Contract Attorneys

In conjunction with the Conflict Coordinator, we are now requiring any new contract attorney applicant to make contact with the Training Coordinator who will evaluate the experience and skill of said applicant prior to OPD offering an MOU. The Training Coordinator will advise me of his evaluation which may require some training/ mentoring as a predicate to any case assignment.

2. Standards Compliance

Since the last Commission meeting I have traveled to Billings and Red Lodge and completed 11 more Standards Compliance interviews.

I have completed 166 interviews out of 221 contract attorneys (75%) since October 2010.

OPD currently has 201 contract/conflict attorneys with a signed MOU. Of those 221 attorneys, one does not bill our office for her work, she is donating her time; one has moved out of state; eight have not had any cases assigned to them as of this date; one is an FTE attorney who took cases with him when he left and he is subject to the six-month rule.

There are currently 13 Attorneys Summary of Education and Experience in pending status at this time. Of those 13, eight have been sent an MOU for review and consideration, but have not returned the signed document as of this date; two have been sent to the Training Coordinator for further review and direct contact with the attorneys to discuss training opportunities; one was placed on hold with additional information requested; and two are from prior FTE attorneys who have not met the six-month rule as of this date.

3. Proficiency Determinations

On November 24, 2010 all the Regional Deputies were sent the standard proficiency determination checklist for contract attorneys. They were asked to complete the same for each contract attorney assigned cases in their respective regions by May 15, 2011. Reminders were sent on February 16, May 2, and August 19, 2011. As of the date of this writing (April 4, 2012) my office has received a total of

122 completed checklists (64%). In some instances, I have received a checklist but have not completed the standards compliance interview.

4. **CLE Affidavit Requirements**

Since the Commission met last I have asked for all contract/conflict attorneys to submit a copy of the 2010 Continuing Legal Education (CLE) Affidavit. This is a document required by the State Bar on an annual basis. It has come to my attention that OPD does not have a particular Standard for this requirement. I would propose that the Standards be modified or clarified regarding the CLE credits Attorneys must have to conduct business for our agency. Currently we have received 130 CLE affidavits from our contract/conflict attorneys.

5. **Client Complaints**

I am continuing to monitor a number of contract attorneys due to client or judicial complaints and/or excessive billing practices. Since the last Commission meeting in February 2012, we have received two new complaints dealing with contract/conflict attorneys. One was handled directly through the regional office and has been resolved. I am also currently tracking the other complaint but as of this writing have not received any documentation.

6. **Other Topics**

- a. The so-called **six- month rule**: My recommendation is that the PDC adopt a policy stating that OPD will not contract with a former FTE for a period of six months from their date of termination. I believe that by adopting a policy we can establish a clear and unambiguous position. I think that the policy will need to address whether or not, or in what instances, a former FTE can continue with cases assigned prior to termination. It should also include exceptions, if any, to the rule.
- b. The **Standards Compliance Policy #136** and the training and CLE requirements contained therein: The Training Coordinator and I have attempted to meet the cumbersome requirements contained in Policy 136 and 135 (Proficiency Determination, Contract Counsel) by creating an alternative approach to both. I have asked the PDC to modify Policy 135 to allow a semi-annual, rather than annual time frame. The policy requires a meeting with each contract attorney and this cannot be done on an annual basis. Additionally, Policy 136 requires the Training Coordinator to "call or visit" 10 FTEs or contract attorneys monthly to do a standards compliance check. Eric Olson has developed an online Standards Compliance test which we have asked the contract and FTEs to complete. Policy 136 requires that the training coordinator select three recently closed cases for discussion and review. By combining these policies and adding the online testing we believe that we have met the spirit of the policies, but also believe that the policies should be modified to say what is actually being done.

Additionally, the Standards have an annual CLE requirement which exceeds the State Bar requirement and additional minimum training requirements as prerequisites to assignment of cases. The CLE requirements have never been enforced by the PDC.

These policies need to be reviewed by a PDC subcommittee and recommendations for modification or enforcement need to be adopted by the PDC.

- c. **New MOU**: The current MOU expires on June 30, 2012. I will be meeting with the Chief in the near future to discuss the terms and conditions contained in the current MOU and the need for modification.